

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

NEPERA, INC., CAMBREX
CORPORATION, WARNER-LAMBERT
COMPANY, LLC, and PFIZER, INC.,

Defendants.

ECF Case

No. 08 Civ. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action for injunctive and declaratory relief and recovery of costs brought pursuant to Sections 106(a), 107(a) and 113(g) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a), 9607(a) and 9613(g). The United States seeks injunctive relief to remedy an imminent and substantial endangerment to human health and the environment arising out of the release or threatened release of hazardous substances into the environment at a site located in the Town of Hamptonburgh, Orange County, New York known as the Nepera Chemical Company Superfund Site ("Site"). The United States also seeks to recover the unreimbursed response costs it has

incurred in connection with the Site, and a declaratory judgment that the Defendants are liable to the United States for all future response costs incurred by the United States relating to the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. §§ 1331, 1345.

3. Venue is proper in this judicial district pursuant to Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b), and 28 U.S.C. § 1391(b)-(c), because the claims arose, and the threatened or actual releases of hazardous substances occurred, in this district.

DEFENDANTS

4. Nepera, Inc. (“Nepera”) is a corporation organized under New York law with its principal place of business at One Meadowlands Plaza, East Rutherford, New Jersey 07073.

5. Cambrex Corporation is a corporation organized under Delaware law with its principal place of business at One Meadowlands Plaza, East Rutherford, New Jersey 07073.

6. Warner-Lambert Company LLC, is a limited liability corporation organized under Delaware law, with its principal place of business at 201 Tabor Road, Morris Plains, New Jersey 07950.

7. Pfizer, Inc. is a corporation organized under Delaware law with its principal place of business at 235 East 42nd Street, New York, New York 10017.

GENERAL ALLEGATIONS

8. The Site is a former disposal facility, encompassing approximately 29.3 acres, located 1.5 miles south of the Village of Maybrook, in the Town of Hamptonburgh, Orange County, New York, bounded by County Highway 4 to the north, Beaverdam Brook to the west, Otter Kill to the south, and an undeveloped tract of land to the east.

9. The Pyridium Corporation ("Pyridium") was founded in 1925 in New York City. In 1942, Pyridium commenced operations at a facility in Harriman, New York, approximately 25 miles away from the Site, for the production of bulk pharmaceutical chemicals and pyridine compound intermediates.

10. In 1949, the Pyridium Corporation merged with the Nepera Chemical Company to form the Nepera Chemical Company, Inc.

11. In 1952, the Nepera Chemical Company purchased farmland at the Site and commenced construction of wastewater lagoons at the Site. These lagoons were utilized for disposal of liquid wastes from the Harriman plant from 1953 to 1967.

12. In December, 1956, the Warner-Lambert Company ("Warner-Lambert") purchased the Nepera Chemical Company. The Nepera Chemical Company, Inc. subsequently was dissolved and, on January 11, 1957, Warner-Lambert reincorporated the company as Nepera, Inc. ("Nepera").

13. Warner-Lambert continued to operate the lagoons at the Site for the disposal of liquid wastes from the Harriman facility from the time of its purchase of Nepera in December 1956, until 1967, when industrial wastes were no longer disposed of at the Site. Warner-Lambert backfilled three of the lagoons in 1968, and the remaining three lagoons were filled in 1974.

14. The Warner-Lambert Company owned and operated the Site property from the time of its purchase in 1956 until its sale of Nepera in 1976.

15. In 1976, Warner-Lambert sold Nepera to Schering A.G., a West German corporation, after the last three lagoons at the Site had been backfilled.

16. In 1986, Schering sold Nepera to CasChem Group, Inc. of Bayonne, New Jersey. In 1987, CasChem was renamed Cambrex Corporation.

17. At present, Nepera, Inc. remains a 100%-owned subsidiary of Cambrex.

18. In February 2000, the Warner-Lambert Company was merged into Defendant Pfizer, Inc.

19. Defendant Cambrex Corporation (then named CasChem Group, Inc) purchased Defendant Nepera, Inc. in 1986. Defendant Nepera is the current owner of the Site.

20. Between 1953 and 1967, Defendants Warner-Lambert and Pfizer and a predecessor corporation disposed of material at the Site containing "hazardous substances," within the meaning of section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including, without limitation, pyridine compounds, chlorobenzene, ethylbenzene, toluene and xylenes.

21. Defendants Warner-Lambert and Pfizer owned and operated the Site from 1957 to 1967 when hazardous substances were disposed of at the Site.

RESPONSE ACTIONS

22. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

23. On July 31, 2007, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice, in a major local newspaper of general circulation, of the completion of the Remedial Investigation (“RI”) and Feasibility Study (“FS”) Reports along with EPA’s proposed plan for remedial action at the Site. EPA provided an opportunity for the public to submit written and oral comments on the proposed plan for remedial action.

24. On September 28, 2007, after a public comment period, EPA issued a Record of Decision (“ROD”) which selected a remedy for the Site. The ROD calls for, *inter alia*, the excavation of contaminated soils and the treatment of such soils in a biocell utilizing soil vapor extraction and biological degradation processes to attain target cleanup levels; bioremediation of contaminants in groundwater; long-term groundwater monitoring; and institutional controls to restrict activities at the Site that would interfere with constructed remedies.

25. The State of New York has concurred with the selected remedy.

26. On September 28, 2007, pursuant to the “special notice” procedures set forth in Section 122 of CERCLA, 42 U.S.C. § 9622, EPA notified Defendants of their potential liability under CERCLA with respect to the Site.

27. “Hazardous substances” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been detected at the Site. These substances include, without limitation, pyridine compounds, chlorobenzene, ethylbenzene, toluene and xylenes.

28. Contaminated soils at the Site are a potential source of contamination for groundwater at or near the Site. The potential migration of any such contaminated groundwater to aquifers or other waters that are sources of drinking water could present a human health risk in

the form of ingestion of contaminated drinking water or dermal contact with water used for domestic purposes.

29. EPA has determined that the actual and threatened release of one of more hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

30. Each Defendant is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

31. Defendants Nepera, Inc. and Cambrex Corporation own and operate the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

32. Defendants Warner-Lambert Company LLC and Pfizer, Inc. owned and operated the Site from 1957 until 1976, including the time period from 1957 through 1967 when there was “disposal” of a hazardous substance at the Site within the meaning of Sections 101(20), 101(29) and 107(a)(2) of CERCLA, 42 U.S.C. §§ 9601(20), 9601(29), 9607(a)(2).

33. The Site is a “facility” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

34. There have been and continue to be “releases” or “threatened releases” of “hazardous substances” within the meaning of Sections 101(14) and (22), and 107(a) of CERCLA, 42 U.S.C. §§ 9601(14) and (22), and 9607(a), into the environment at the Site.

FIRST CLAIM FOR RELIEF

35. Paragraphs 1-34, are realleged and incorporated herein by reference.

36. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this Section--

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person,

from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--

- (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan

37. The release or threatened release of a hazardous substance at the Site has caused the United States to incur "response" costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with the Site. The United States will continue to incur response costs in connection with the Site in the future.

38. The costs of the response actions taken and to be taken by the United States in connection with the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

39. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable to the United States, jointly and severally, for the response costs incurred and to be incurred by the United States in connection with the Site.

40. The United States is entitled to a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Defendants are liable to the United States, jointly and severally, under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all future response costs incurred by the United States in connection with the Site.

SECOND CLAIM FOR RELIEF

41. Paragraphs 1-40, inclusive, are realleged and incorporated herein by reference.

42. Section 106 of CERCLA, 42 U.S.C. § 9606, provides, in pertinent part, that

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

43. By Executive Order 12580, dated January 23, 1987, the President's authority under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), has been delegated to the Administrator of EPA. The Administrator of EPA has redelegated his functions under Section 106(a) to the Regional Administrators of EPA, including the Regional Administrator of EPA Region 2.

44. The Regional Administrator of EPA Region 2 has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the

environment because of the actual and/or threatened releases of hazardous substances at and from the Site.

45. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), authorizes the United States to bring an action to secure such relief as may be necessary to abate the danger or threat at the Site.

46. Defendants are liable to perform the work required to implement the remedial action selected by EPA in the ROD, in order to abate the conditions at the Site that present or may present an imminent and substantial endangerment to the public health or welfare or the environment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States of America respectfully requests that this Court:

1. Order Defendants, jointly and severally, to reimburse the United States for all response costs incurred and to be incurred by the United States in connection with the Nepera Chemical Company Superfund Site, plus interest;

2. Enter a declaratory judgment that Defendants are jointly and severally liable for all future response costs incurred by the United States in connection with the Site not inconsistent with the NCP, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2);

3. Order Defendants, jointly and severally, to implement the remedial action selected by EPA in the Record of Decision issued in September 2007;

4. Award the United States its costs of this action; and

5. Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

Date: _____

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